

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

**S&D Industrial Painting, Inc.
Tarpon Springs, Pinellas County, FL
USEPA ID NUMBER ALR000047092**

CONSENT ORDER NO. 10-XXX-CHW

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department" or "ADEM") and S&D Industrial Painting, Inc. (hereinafter "S&D") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), and the Alabama Hazardous Wastes Management and Minimization Act (hereinafter "AHWMMA"), Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

STIPULATIONS

1. S&D Industrial Painting, Inc. (hereinafter "S&D"), a Florida corporation that is located at 1602 Mexico Ave, Tarpon Springs, Pinellas County, FL, operates a bridge painting company. Between October 2009 and January 2010, S&D was contracted by the Alabama Department of Transportation to clean and paint five bridges in Marengo and Sumter Counties. In the course of doing so, S&D became a hazardous waste generator that was assigned EPA Identification Number ALR000047092.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).
3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state

agency responsible for the promulgation and enforcement of solid and hazardous waste regulations in accordance with the federal Solid Waste Disposal Act §§ 1002 to 11012, 42 U.S.C. §§ 6901 to 6992k, as amended. In addition, the Department is authorized to administer and enforce the provisions of the AHWMMA, Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.).

DEPARTMENT'S CONTENTIONS

4. On March 3, 2010, Department personnel conducted an on-site compliance evaluation inspection (hereinafter "CEI") of the S&D operations in Marengo and Sumter counties. The CEI and a review of S&D's compliance showed the following:

A. Pursuant to ADEM Admin. Code r. 335-14-3-.01(3)(a), a generator must not treat, store, and dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the Department. In the course of painting five state-owned bridges, S&D generated, self-transported, and then stored sixty-one drums of D007 hazardous waste, consisting of spent blasting media and paint chips, before receiving EPA Identification numbers from the Department for all of the sites where waste was generated or stored. In February 2010, S&D submitted an ADEM Form 8700-12, dated "3/23/10", to the Department. In the notification, S&D was identified as a Large Quantity Generator of hazardous waste. On March 4, 2010, the Department issued an EPA Identification Number to S&D for a 90-day hazardous waste container storage area, which was located on private property near the city of Demopolis, Marengo County, Alabama.

B. Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)2., except as provided in 335-14-3-.03(5)(d), (e), (f), and (g), a Large Quantity Generator may accumulate hazardous waste which is generated on-site for 90 days or less without a permit or without having interim status, provided that the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container. S&D accumulated sixty-one, 55-gallon drums of D007 hazardous waste and failed to mark the hazardous waste containers with accumulation start date(s).

C. Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)3., except as provided in 335-14-3-.03(5)(d), (e), (f), and (g), a Large Quantity Generator may accumulate hazardous waste which is generated on-site for 90 days or less without a permit or without having interim status, provided that

while being accumulated on site each container and tank is labeled or marked clearly with the words, "Hazardous Waste" and the EPA hazardous waste number. S&D accumulated the aforementioned sixty-one drums of hazardous waste, and failed to clearly label or mark the hazardous waste containers with the words "Hazardous Waste" and the applicable EPA hazardous waste numbers.

D. Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)1.(i) referencing ADEM Admin. Code r. 335-14-6-.09(5) referencing ADEM Admin. Code r. 335-14-6-.02(6)(d), the owner or operator must inspect areas where containers are stored, at least weekly, looking for leaks and for deterioration caused by corrosion or other factors. The owner or operator must also note the number and capacity of hazardous waste containers present. The owner or operator must record inspections in an inspection log or summary. He must keep these records for at least three years from the date of inspection. At a minimum, these records must include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions. S&D did not maintain on site documentation of weekly inspections of the initial 90-day hazardous waste container storage area, which was located at the Rooster Bridge (BIN 11793), and the second/final 90-day hazardous waste container storage area, which was located on private property near the city of Demopolis, AL (at approximately Latitude 32° 26' 56" and Longitude -87° 59' 46").

E. Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)4. referencing ADEM Admin. Code r. 335-14-6-.02(5)(c), except as provided in 335-14-3-.03(5)(d), (e), (f), and (g), a Large Quantity Generator may accumulate hazardous waste which is generated on-site for 90 days or less without a permit or without having interim status, provided that the generator complies with certain requirements for owners or operators including posting a sign with the legend, "Danger—Unauthorized Personnel Keep Out", at each entrance to the active portion of a facility, and at other locations, in sufficient numbers to be seen from any approach to this active portion, unless exempt under 335-14-6-.02(5)(a)1. and (a)2. S&D did not post the required warning signs at each approach to the second/final 90-day hazardous waste container storage area.

F. Pursuant to ADEM Admin. Code r. 335-14-4-.01(2)©, a non-rail transporter must not transport hazardous wastes without having received an Alabama Hazardous Waste Transport Permit

in compliance with Rules 335-14-8-.09 through 335-14-8-.13. S&D did not apply for or receive an Alabama Hazardous Waste Transport Permit before self-transporting hazardous waste on a public highway.

G. Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(b), a Large Quantity Generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 335-14-5 and 335-14-6, and the permit requirements of 335-14-8 unless he has been granted an extension to the 90 day period. Such extension may be granted by the Department if hazardous wastes must remain on-site for more than 90 days due to unforeseeable, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Department on a case-by-case basis upon written request from the generator submitted prior to the expiration of the 90-day period. According to S&D's representative, its resurfacing machine generated approximately 35 gallons of hazardous waste material per day. At the time of the inspection S&D had not manifested any hazardous waste off site to a designated facility. S&D therefore accumulated hazardous waste for more than 90 days without a storage facility permit.

H. Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)4. referencing ADEM Admin. Code r. 335-14-6-.04(2)(a), except as provided in 335-14-3-.03(5)(d), (e), (f), and (g), a Large Quantity Generator may accumulate hazardous waste which is generated on-site for 90 days or less without a permit or without having interim status, provided that the generator complies with certain requirements for owners or operators, including having a contingency plan for his facility. S&D did not maintain on site a contingency plan or a Spill Prevention, Control, and Countermeasures Plan and was not exempted from this requirement.

I. Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)4. referencing ADEM Admin. Code r. 335-14-6-.02(7)(d), except as provided in 335-14-3-.03(5)(d), (e), (f), and (g), a Large Quantity Generator may accumulate hazardous waste which is generated on-site for 90 days or less without a permit or without having interim status, provided that the generator complies with certain requirements for owners or operators including maintaining records that document that the training or job experience required under 335-14-5-.02(7)(a), (b), and (c) has been given to, and completed by, facility personnel. S&D did not maintain the following required hazardous waste training related

documents and records on site: 1. job title; 2. job description; 3. description of the type and amount both introductory and continuing training and; 4. records that document that the training required was completed by facility personnel.

5. As a result of this CEI, S&D was issued a Notice of Violation (NOV), dated April 5, 2010, which cited violations of the hazardous waste regulations that were discovered during the inspection.

6. On May 4, 2010, the Department received S&D's response, dated April 28, 2010, to the aforementioned NOV.

7. Pursuant to Ala. Code § 22-22A-5(18) (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent, and degree of success of such person's efforts to minimize or mitigate the effects of such alleged violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the department shall not exceed \$250,000.00. Each day such a violation continues shall constitute a separate violation.

8. In arriving at this civil penalty, the Department has considered the following:

a. **SERIOUSNESS OF THE VIOLATION:** S&D stored drums of hazardous waste beyond the allotted time frame (ninety days) without first obtaining an extension and/or applying for an AHWMMMA permit for storage. S&D also self-transported the aforementioned containers of hazardous waste from one hazardous waste container storage area to another without first obtaining an Alabama Hazardous Waste Transport Permit. The Department is not aware of any irreparable harm to the environment resulting from the alleged violations.

b. **THE STANDARD OF CARE:** S&D did not exhibit a standard of care commensurate with applicable regulatory standards.

c. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:

S&D received an economic benefit when it self-transported hazardous waste from one hazardous waste container storage area to another without first obtaining an Alabama Hazardous Waste Transport Permit.

d. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE ALLEGED VIOLATION UPON THE ENVIRONMENT: Upon discovery of the violations, S&D took corrective actions to address the violations. The violations appear to have had little or no effect upon the environment.

e. HISTORY OF PREVIOUS VIOLATIONS: Based on Department records, S&D has no other historic record of violations of the AHWMMMA or ADEM Admin. Code div. 335-14.

f. THE ABILITY TO PAY: S&D has not alleged an inability to pay the civil penalty.

g. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has determined the amount of the penalty it believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

9. The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and has concluded that the civil penalty herein is appropriate and consistent with the historical penalty range imposed by the Department for similar violations (see Attachment A, which is made a part of the Department's contentions).

10. The Department neither admits nor denies S&D's contentions. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

FACILITY'S CONTENTIONS

11. S&D Industrial Painting has been in the industrial coating business since March of 1995. S&D has never had any environmental issues or penalties since the company began. S&D works in several states and has worked hard to build a great reputation wherever we have worked. S&D would never commit to any activities that would intentionally cause harm to the environment and surrounding areas in which we work. Due to some unforeseen circumstances that arose during the course of completing the project in question, S&D received some citations. S&D had stored waste under the bridge where we were working. The Dam up river had been opened, causing the water line to rise. When we noticed the rising the of the river, we had all of the waste under the bridge moved out of the flood plain, this occurred on Saturday. S&D had no time to notify the proper agency about the waste that was being stored under the bridge before moving it to a safer location. S&D understands that this created an issue because we are not permitted to transport hazardous waste, it was not our intention to create any issues. S&D works hard to implement rules within our company with integrity, and always makes sure that they are ethically sound. It was never our intention to break any regulations. S&D moved quickly to respond to a situation which we thought was in the best interest of the citizens of Alabama.

12. S&D neither admits nor denies the Department's Contentions. S&D consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

ORDER

THEREFORE, without admitting that it has violated any statutes or regulations, S&D, along with the Department, desires to resolve and settle the alleged violations cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18) (2006 Rplc. Vol.), as well as the need for timely and effective enforcement; the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and S&D agree to enter into this Consent Order with the following terms and conditions:

A. Pursuant to Ala. Code § 22-22A-5(18)a.4. (2006 Rplc. Vol.), S&D agrees to pay to the Department a civil penalty in the amount of \$25,000 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. S&D agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

Any check submitted to the Department pursuant to this order shall reference S&D's name and address and the ADEM Administrative Order Number of this action.

C. That, commencing immediately upon the effective date of this Consent Order and continuing each and every day thereafter, S&D agrees to comply with all terms, conditions, and limitations of the AHWMMA, Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.) and the regulations promulgated pursuant thereto.

D. The parties agree that, subject to the terms of these provisions and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations, which are cited in this Consent Order.

E. S&D agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

F. For purposes of this Consent Order only, S&D agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. S&D also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, S&D agrees to be limited to the defenses of Force Majeure, compliance with this Agreement, and physical impossibility. A Force Majeure is defined as

any event arising from causes that are not foreseeable and are beyond the reasonable control of S&D, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of S&D) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute Force Majeure. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information agrees to be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control of and without the fault of S&D, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

G. The parties agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate; S&D agrees not to object to such future orders, litigation, or enforcement action based on the issuance of this Consent Order if future orders, litigation, or other enforcement action address new matters not raised in this Consent Order.

H. The parties agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and S&D does hereby waive any hearing on the terms and conditions of this Consent Order.

I. The parties agree that this Consent Order shall not affect S&D's obligation to comply with any Federal, State, or local laws or regulations.

J. The parties agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

K. The parties agree that, should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

L. The parties agree that any modifications of this Consent Order must be agreed to in writing signed by both parties.

M. The parties agree that, except as otherwise set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve S&D of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

S&D Industrial Painting, Inc.

ALABAMA DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT



(Signature of Authorized Representative)

Frances Daxalos

(Printed Name)

Secretary

(Printed Title)

8/16/10

(Date Signed)

Lance R. LeFleur
Director

(Date Executed)

ATTACHMENT A

Penalty Calculation Worksheet

S&D Industrial Painting, Inc.

ALR000047092

Tarpon Springs, FL

Violation*	Number of Violations*	Seriousness of Alleged violation & Base Penalty*	Standard of Care*	History of Previous Violations*
Failure to obtain an EPA ID number	1	\$100	\$0	\$0
Failure to mark hazardous waste drums with the accumulation start date	61	\$6,100	\$0	\$0
Failure to mark containers with the words "hazardous waste"	61	\$6,100	\$0	\$0
Failure to perform weekly inspections for the HW storage areas	2	\$500	\$0	\$0
Failure to post the required warning signs at each approach to the hazardous waste container storage area	1	\$100	\$0	\$0
Failure to obtain an AHWMMMA transport permit before transporting	1	\$10,000	\$0	\$0
Failure to obtain an AHWMMMA permit for storage	1	\$10,000	\$0	\$0
Totals:	128	\$32,900.00	\$0	\$0

Economic Benefit: \$ 985
Mitigating Factors:
Ability to Pay: \$0
Other Factors: (\$8,885)

Civil Penalty: **\$25,000.00**

Footnotes

* See the "Department's Contentions" of the Order for a detailed description of each alleged violation and the penalty factors.